

HANPSEA1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 467 ALC

5 NORMAN SEABROOK AND MURRAY HUBERFELD,

6 Defendants.

7 -----x

8  
9  
10 October 23, 2017  
11 9:20 a.m.

12  
13 Before:

14 HON. ANDREW L. CARTER, JR.,

15 District Judge  
16 and a jury

17  
18 APPEARANCES

19 JOON H. KIM,  
20 United States Attorney for the  
21 Southern District of New York  
22 KAN MIN NAWADAY,  
23 MARTIN BELL,  
24 RUSSELL CAPONE,  
25 Assistant United States Attorneys

## APPEARANCES (Continued)

BRACEWELL, LLP,  
Attorneys for defendant Seabrook  
BY: PAUL LEWIS SHECHTMAN, Esq.  
MARGARET EMMA LYNAUGH, Esq.  
Of counsel

MAZUREK LIPTON, LLP  
Attorneys for defendant Huberfeld  
BY: HENRY EDWARD MAZUREK, Esq.  
EVAN LOREN LIPTON, Esq.  
Of counsel

Also Present:  
BARD HUBBARD, Special Agent FBI  
YOLANDA BUSTILLO, Paralegal USAO  
AUGUSTA GRANQUIST, Paralegal

(In open court)

(Case called)

MR. CAPONE: Russell Capone for the government, and  
with me at counsel table is AUSA Kan Nawaday, Special Agent  
Bard Hubbard from the FBI, Paralegal Specialist Yolanda  
Bustillo. Good morning, your Honor.

THE COURT: Good morning.

MR. SHECHTMAN: Paul Shechtman for Mr. Seabrook, who  
is also present, and Maggie Lynaugh.

1 THE COURT: Okay.

2 MR. MAZUREK: Good morning, your Honor. Henry Mazurek  
3 and Evan Lipton on behalf of my client, Murray Huberfeld, and  
4 also with us is Kimberly Meilun and Debra Sloane, who will  
5 assist during the trial.

6 THE COURT: Good morning.

7 MR. SHECHTMAN: With me is Gussie Granquist, and I  
8 think Gussie should be added as paralegal. I'll be calling on  
9 her during the trial to help me with putting things up on the  
10 screen. I think her name should be added to the list of people  
11 we ask the jurors about.

12 THE COURT: Okay. Counsel for the government and  
13 Mr. Huberfeld, are there any other individuals who will be  
14 helping you with the trial whose names have not been included?

15 MR. MAZUREK: Your Honor, we submitted to your Honor  
16 by e-mail earlier this morning a list of potential names. I  
17 can hand that list up to you, write in Gussie's name.

18 THE COURT: Okay. Yes, please do that and hand that  
19 up to me. Okay. While that's happening let's place this on  
20 the record. We had this conversation before just about  
21 scheduling. The jurors are on notice that we're going to be  
22 using this 9:00 to 2:30 schedule; so the jurors are expecting  
23 to be dismissed at 2:30 today and we will do that.

24 We had previously talked about having a conference to  
25 discuss this motion to quash subpoenas at 1:00. We're going to

1 need to move that to 3:00 today, and we'll also deal with the  
2 other matters concerning the remaining issues relevant to  
3 motions in limine. We'll do that starting at 3:00 as well.

4 Some other preliminary things. First of all, this was  
5 touched upon briefly on Friday. Let's get into this a little  
6 bit more. I'm going to do an allocution regarding the  
7 rejection of guilty plea offers, to the extent there was an  
8 offer, or the rejection of the opportunity to plead guilty.  
9 I'm going to address this to Mr. Seabrook and Mr. Huberfeld; so  
10 both of you, please, listen closely, as well as your attorneys.

11 Let me ask counsel for the government and counsel for  
12 the defense this question. Did the government extend a plea  
13 offer to either defendant?

14 MR. CAPONE: No, no formal plea offer or anything in  
15 writing was submitted to the defendants.

16 THE COURT: Okay. Was there a Pimentel letter given  
17 to either of the defendants?

18 MR. CAPONE: No, your Honor.

19 THE COURT: Okay. In the government's view, what is  
20 the defendant's sentencing exposure if they proceed --

21 MR. SHECHTMAN: Judge?

22 THE COURT: Yes.

23 MR. SHECHTMAN: I understand. I mean, we have a  
24 high-publicity case raising an issue that I want to talk to the  
25 Court about. I'm not sure that there's a reason to put what

1 the government thinks is a sentencing exposure in a case that  
2 there was no offer, none was requested, none was sought. Both  
3 defendants will confirm that, and unless your Honor feels  
4 there's a compelling need, I prefer it to not to be on the  
5 record.

6 MR. MAZUREK: I agree with my colleague.

7 THE COURT: All right. Then let me ask this question.  
8 I understand that no offer has been made by the government to  
9 either defendant. I want to ensure that both defendants are  
10 aware of the fact that they have a right to go to trial. They  
11 also have a right to plead guilty, if they choose to do so. Do  
12 you understand that, Mr. Seabrook?

13 THE DEFENDANT: Good morning, your Honor. Yes, I do  
14 understand that. I have had no conversations with the  
15 government whatsoever from the time I was arrested in my home.

16 THE COURT: Okay. Again, I'm not asking about the  
17 conversations with the government. What I want to make sure  
18 that you, Mr. Seabrook and Mr. Huberfeld, understand is that if  
19 you were to plead guilty, you could do that, and under the  
20 guidelines, there are reductions appropriate for acceptance of  
21 responsibility.

22 In Federal Court there is no promise as to what your  
23 guideline range will be, nor will there be any promise as to  
24 what your sentence would be. Sentencing would be up to me. I  
25 just want to make sure that you understand that in addition to

1 having the right to go to trial, you have a right to plead  
2 guilty regardless of whether or not the government makes an  
3 offer. You understand that, Mr. Seabrook?

4 THE DEFENDANT: Yes, sir. I do.

5 THE COURT: And have you discussed that with your  
6 attorney?

7 THE DEFENDANT: Yes, sir. I have.

8 THE COURT: Do you understand that, Mr. Huberfeld?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And have you discussed that with your  
11 attorney?

12 THE DEFENDANT: I have. Thank you.

13 THE COURT: Okay. Counsel for Mr. Seabrook and  
14 Mr. Huberfeld, is that correct, have you discussed that with  
15 your clients?

16 MR. SHECHTMAN: We have, your Honor, in the most  
17 general sense. Mr. Seabrook very much wants a trial.

18 THE COURT: Okay.

19 MR. MAZUREK: I also have discussed it my client, and  
20 my client insists on a plea of not guilty.

21 THE COURT: Okay. Any further allocution requested in  
22 this regard by the government or the defense?

23 MR. CAPONE: No, your Honor.

24 THE COURT: Okay.

25 MR. SHECHTMAN: May I be heard on a matter?

1 THE COURT: Sure. Is this about --

2 MR. SHECHTMAN: Jury selection.

3 THE COURT: Right. Is this about peremptory  
4 challenges?

5 MR. SHECHTMAN: No.

6 THE COURT: All right. Let me hear you.

7 MR. SHECHTMAN: Last night, I learned that one of our  
8 local papers had a story that relates to the 404(b) issue, if  
9 you remember that was before your Honor, that the government  
10 wound up -- we filed a letter. We asked that it be under seal.  
11 The Court decided against us on that. The government  
12 eventually withdrew that 404(b) application.

13 Well, one of our papers has a story about that. It  
14 identifies the potential witness in the case, who's a prominent  
15 member of the New York community, and it's on Page 6, with a  
16 large headline that says "Union Bribe Bid" and then the name of  
17 the witness.

18 As your Honor knows, we thought the whole issue was  
19 highly prejudicial at the time, enough to make the unusual  
20 request. My feeling is anybody who's read this, really can't  
21 be a fair juror, and so we would ask that your Honor do two  
22 things; one is, ask the jurors whether they have read anything  
23 about the case since completing the questionnaire last week.  
24 And if the answer to that is yes, then -- and I say this  
25 regrettably because no one wants to start this trial more

1 expeditiously than Mr. Seabrook -- to do individual voir dire  
2 because you can't say, after you have read the story in this  
3 mornings' newspaper on this topic without effecting the entire  
4 jury.

5 And, again, I think if they have, at the very least,  
6 the obvious question is: Can you put it out of your mind?  
7 Because it was, in my view, patently inadmissible to begin  
8 with. Your Honor had ruled expressly on the point. It's not  
9 coming in in this case, and if you read it, I think it's highly  
10 prejudicial. So I apologize to the Court because I don't want  
11 individual voir dire, but I don't know any other way to handle  
12 it.

13 I have spoken to the government. They will express  
14 their views, but I think they're not unsympathetic here. I can  
15 tell your Honor the following, the defense did not leak this.  
16 I spoke to Mr. Capone last night. I have the greatest respect  
17 for him. I'm sure he didn't leak it, but it didn't come from  
18 us.

19 THE COURT: Okay. Government?

20 MR. CAPONE: We agree, your Honor. It is unfortunate  
21 that it's in the paper, and we have no objection to the  
22 voir dire that Mr. Shechtman asked for.

23 THE COURT: Okay. May I see it?

24 MR. SHECHTMAN: Yes.

25 THE COURT: Okay. You can give this back to counsel.



1 MR. SHECHTMAN: Your Honor, I should say it is what  
2 our President would call "fake news," but I think it's still  
3 highly prejudicial.

4 THE COURT: Okay. Let me get a sense from counsel,  
5 defense counsel, as to what sort of inquiry you would want me  
6 to make if, in fact, a juror says that they've read something  
7 or heard something about this case. I will ask the question  
8 more generally: Has anyone read anything or seen anything or  
9 heard anything about this case since the questionnaire was  
10 filled out? If someone says, yes, I understand you want me to  
11 bring this person in individually and what do you want me to  
12 ask them?

13 MR. SHECHTMAN: I think it could be as simple as the  
14 following, your Honor: There were stories in two other  
15 newspapers this morning. One said that jury selection was  
16 going to begin this morning. The other repeated stories about  
17 Mr. Seabrook and his success and his reputation in the  
18 community. Those are fine. I mean, those are old news, old  
19 hat.

20 So I think your Honor could literally say to a juror:  
21 In what paper did you read it? And if the answer is Daily News  
22 or The New York Times, I think we can send that person back.  
23 If the answer is The Post, right, then I think the question is:  
24 What did you read? And I'll be candid. If the answer is: I  
25 read that article, we think you should strike that person for

1 cause.

2 But I really do think, because no one wants to waste  
3 your time, that once you have somebody at sidebar, this is a  
4 one-question inquiry: What paper did you read? And if the  
5 answer is: The New York Times, I think the response is: Great  
6 newspaper, and just send that person back. If it's The Post,  
7 I'm not even sure your Honor has to -- if it's The Post, follow  
8 up with: What did you read? And if the answer is: I read  
9 about this, then we can figure out whether you say: Can you  
10 still be fair? We'll do a challenge for cause at that point,  
11 but certainly if your Honor wants to ask that question, that's  
12 fine. But I don't think it needs to be more elaborate than  
13 that.

14 THE COURT: Okay. Government?

15 MR. CAPONE: With the exception, your Honor, that I  
16 don't necessarily agree that having read the article  
17 automatically makes a juror prejudice, and I do think your  
18 Honor should follow up, if they say they read the article. I  
19 agree with the rest of what Mr. Shechtman said.

20 THE COURT: All right. Let me just also state this.  
21 There are several people here in the audience, which is fine.  
22 We have an overflow room. We're reserving this space in here,  
23 for today's purposes, for family members, the press and people  
24 who are also associated with working on the case.

25 For the folks who are also working on the case, who I

1 see sort of towards the front of the courtroom, when the  
2 potential jurors come in, everyone is going to have to get to  
3 the back so that we have the first few rows available for the  
4 potential jurors.

5 I also want to instruct everyone not to say anything  
6 about the case while you're in the courtroom. Don't make any  
7 comments, even if you're making innocent comments. It could be  
8 misconstrued. We don't want to say anything that could  
9 possibly influence any jurors. And that goes for also when  
10 you're out of the courtroom, when we're on a break, if you're  
11 out in the halls, don't say anything about this case.

12 Is there anything else that we need to deal with  
13 before we bring the jurors in? It's going to take some time to  
14 get them in here. I know they've seen the video, but we've got  
15 to go through all those numbers and bring them in. Is there  
16 anything else we need to discuss before we bring the jury in?

17 MR. SHECHTMAN: Judge, the number of peremptories?

18 THE COURT: Okay. I've read the parties' submissions,  
19 and I think the government has the better of the argument. I'm  
20 going to deny the defense request. Although, I do have  
21 discretion to grant additional peremptories, I'm going to deny  
22 that request.

23 Is there anything else that we need to discuss before  
24 we bring the jurors in?

25 MR. CAPONE: Not from the government, your Honor.

1 THE COURT: Okay.

2 MR. SHECHTMAN: No, your Honor.

3 MR. MAZUREK: No, your Honor.

4 THE COURT: Soon, if you don't have it yet, you will  
5 get a copy of the individual questions that the jurors will get  
6 after I ask my general questions to the jury panel, and in all,  
7 we have 36 jurors who haven't been excused for cause at that  
8 point. We'll hand them the copies of this individual  
9 questionnaire. They will not fill it out. They will just  
10 answer the questions orally as they pass the microphone back  
11 and forth.

12 Again, I will let counsel know, I'm not intending to  
13 repeat any questions that have been covered in some way in the  
14 questionnaire, except for updates as it relates to the names  
15 they may hear and news coverage and the like because, as  
16 counsel who are all experienced trial lawyers know, when you  
17 ask the same witness the same question twice, it's not a good  
18 idea. The best you're going to get is that they're going to  
19 repeat their answer. More than likely, especially if they are  
20 an adverse witness, they're going to realize, hmm, there must  
21 have been something problematic or something that the other  
22 side really liked in my answer and I need to change it. So I  
23 don't intend to go down that path.

24 All right. So we'll wait until the jurors get here,  
25 and we'll start soon. Anything else from anyone? Are we all

1 good with the technical things? Are all the technical glitches  
2 worked out?

3 MR. CAPONE: I think we are.

4 MR. MAZUREK: Just logistically, your Honor sits the  
5 16 in the first -- first 16 in the jury box, and then I imagine  
6 down the two rows.

7 THE COURT: Correct. And the next 20 will be in the  
8 first two rows. Okay? And then the others will be behind  
9 them.

10 MR. MAZUREK: Thank you.

11 MR. SHECHTMAN: Judge, we're hoping to use that 2:30  
12 to 3:00 spot to just check out the equipment in the courtroom,  
13 to make sure we know how it works. If it's possible for the  
14 courtroom deputy to be present during that, that would be  
15 great. If not, I understand.

16 THE COURT: Okay. All right. See you soon.

17 (Recess)

18 THE COURT: While we're waiting, why don't we go ahead  
19 and let me get from counsel the specific questions they want me  
20 to ask of jurors 10, et cetera. Have counsel conferred about  
21 this? Are counsel on the same page? Let me get a sense of  
22 what you want me to ask.

23 MR. SHECHTMAN: Judge, if you give us two or three  
24 minutes, we may be able to do that.

25 THE COURT: Okay. You've got it. I'll be back.

1 (Recess)

2 THE COURT: Go ahead, counsel.

3 MR. SHECHTMAN: Judge, juror No. 10 --

4 THE COURT: Yes.

5 MR. SHECHTMAN: -- the question that gave us pause on  
6 juror No. 10 is question 13, and the juror wrote: In my  
7 opinion, unions in general are not helping the American economy  
8 anyway. Views regarding unions make it difficult for the jury  
9 to be fair and impartial. That's juror No. 10.

10 And at least one side would like you to inquire as to  
11 whether those beliefs are deep seeded enough that the juror  
12 really couldn't carry out his juror duties. So on 10, it is a  
13 question about fairness.

14 18, your Honor, there are a series of questions here,  
15 but you see they relate. Her opinions about criminal defense  
16 attorneys might make it difficult for her to be fair and  
17 impartial. And her opinions about unions and hedge funds might  
18 make it difficult for her to be fair and impartial. She says  
19 her husband is a PBA member. She works for a white-collar  
20 attorney, who was a former prosecutor for the Southern District  
21 of New York. They have many hedge fund cases with the SEC.  
22 Her father -- a father of the daughter's friend is a CO at  
23 Rikers. So in specific, it is questions about criminal defense  
24 attorneys and fairness, and union and hedge funds and fairness,  
25 and I think that probably picks up the last question as well.

1 THE COURT: Okay.

2 MR. SHECHTMAN: 27, she was a law school classmates  
3 with Preet and Joon at Columbia. She says nothing about what  
4 kind of students they were. She said she is currently  
5 litigating a case with several significant filings over the  
6 next four weeks. It would be difficult for me to meet my case  
7 obligations. There's really two questions, whether her  
8 law-school relationship causes any fairness problem and it's a  
9 hardship issue.

10 THE COURT: Okay.

11 MR. SHECHTMAN: No. 30, she is an orthopedic nurse at  
12 Westchester Medical Center. The four weeks of a trial give her  
13 concern about patient care; so it's a hardship issue for her.

14 THE COURT: Okay.

15 MR. SHECHTMAN: No. 37 we have agreed to strike.

16 THE COURT: Okay.

17 MR. SHECHTMAN: 56, we have agreed to strike.

18 THE COURT: Okay.

19 MR. SHECHTMAN: 57, she learned about the case from  
20 1010 WINS Radio, recalls hearing about the apparent theft. Has  
21 opinions about the U.S. Attorney's Office for the Southern  
22 District of New York that might make it difficult for be fair  
23 and impartial. So it's really a question what did she hear,  
24 did it affect her, and would her opinions about the Southern  
25 District of New York prevent her from being fair and impartial.

1 THE COURT: And on 57, was it opinions about --

2 MR. SHECHTMAN: About southern District of New York.

3 THE COURT: The U.S. Attorney's Office?

4 MR. SHECHTMAN: U.S. Attorney's Office, yes. I  
5 apologize.

6 THE COURT: Okay.

7 MR. CAPONE: Without saying one way or the other which  
8 way those opinions go.

9 THE COURT: Okay.

10 MR. SHECHTMAN: 78, it's a hardship issue. Her job  
11 doesn't pay for jury duty.

12 91 says, generally, that the nature of the case would  
13 make it difficult for her to be fair and impartial. She has  
14 relatives in law enforcement, and she has some relatives with  
15 union connections. She has a trip in December, but that  
16 shouldn't be a problem. So it really is what does she mean by  
17 the nature of the case, her law enforcement connections and her  
18 union connections.

19 THE COURT: Okay. All right. That should keep us  
20 busy for a while. I think that should be good for now. Then  
21 we'll deal with the others.

22 MR. SHECHTMAN: There are four left, your Honor.

23 THE COURT: Sure. Hold on. Hold on.

24 MR. SHECHTMAN: Should I do them?

25 THE COURT: Yes. Let me just make sure I have enough



1 space to jot all of this down. Okay. What are the others?

2 MR. SHECHTMAN: Has opinions about the criminal --

3 THE COURT: Which number is this?

4 MR. SHECHTMAN: 98. I apologize. Has opinions about  
5 the criminal justice system that make it difficult for him or  
6 her to be fair and impartial. Too many innocent people get  
7 locked up. She's worked on wrongful conviction cases, and she  
8 may have hardship issues.

9 THE COURT: Okay. We're still waiting for four jurors  
10 to show up.

11 MR. SHECHTMAN: 118, she's applying for jobs in  
12 Washington and a four-week delay may be difficult; so she's a  
13 hardship issue.

14 THE COURT: What would you like me to ask her?

15 MR. SHECHTMAN: I think it's just generally -- I mean,  
16 in a lot of these hardship cases, one side or the other had the  
17 sense that jury duty is important, that this doesn't seem that  
18 demanding; so the real question is will -- this should be a  
19 three-week trial, will you be able to do this without serious  
20 damage to your career in Washington. If it's going to cause  
21 her serious damage, nobody wants her. But if the answer is,  
22 look, I can start interviewing in mid-November, she may be an  
23 acceptable juror.

24 THE COURT: Okay.

25 MR. SHECHTMAN: 121, sometimes has difficulty hearing;

1 so there is a hearing issue here, and some sense that she may  
2 have to work, depending on her boyfriend's schedule. So it's a  
3 hardship issue.

4 THE COURT: Now, what would you like me to ask her  
5 about her hearing issue?

6 MR. SHECHTMAN: I think all of us, or at least some of  
7 us, weren't quite sure what it means to say sometimes I have  
8 difficulty hearing. If she's really not going to hear  
9 anything, if she's going to miss things during the trial, she  
10 should be excused, but I think all of us sometimes have  
11 difficulty hearing, including the court reporter, depending on  
12 who's close to a mic or not. It's just how serious is the  
13 hearing issue. If it really will prevent her from hearing, she  
14 should go. So if your Honor just inquires generally how bad  
15 her hearing is.

16 THE COURT: What specifically would you like me to  
17 say?

18 MR. SHECHTMAN: If everybody will have a microphone,  
19 would she have difficulty hearing in the courtroom? If her  
20 answer is yes, we're okay with her being excused.

21 THE COURT: My concern is that this courtroom is a  
22 beautiful courtroom, but the acoustics aren't great; so people  
23 who have perfect hearing may have difficulty at times.

24 MR. SHECHTMAN: Your Honor, we'll strike her, then.  
25 Both sides are agreeable to that.

1 THE COURT: Okay.

2 MR. SHECHTMAN: Okay? So 121 is stricken for cause.

3 THE COURT: Okay.

4 MR. SHECHTMAN: And 123 says he's a partner at Cravath  
5 with serious responsibilities, and serving on a jury could  
6 cause serious damage to his career. And I think all parties  
7 would like you to ask why Cravath is so special.

8 THE COURT: Well, I won't ask it like that, but what  
9 is it that you want me to ask him?

10 MR. SHECHTMAN: Look, I mean, there's not a lawyer in  
11 this city who isn't busy, and I think our feeling is we all  
12 have responsibilities. If he really says it's going to cause  
13 him substantial harm, what are we going to do? But there are  
14 some cases, and this may be one of them, where we're going to  
15 have a lawyer on the jury.

16 THE COURT: Okay.

17 MR. SHECHTMAN: So it's just a question of how serious  
18 of a hardship are those postponed events.

19 THE COURT: Okay.

20 MR. SHECHTMAN: And if I could talk to Mr. Capone for  
21 a second.

22 (Pause)

23 MR. SHECHTMAN: Judge, so those are the people, Judge.

24 THE COURT: Okay. So just as an update, we're still  
25 waiting on three jurors to show up.

1 MR. SHECHTMAN: Judge, are we going to question these  
2 people individually?

3 THE COURT: That's what I'm about to ask counsel. It  
4 may make sense to go ahead and bring in these jurors  
5 individually. We'll swear them individually and start  
6 questioning them.

7 The other thing is, with the number of jurors that  
8 we're going to need to bring in here, we're going to basically  
9 need all of the benches; so I'll ask counsel what their  
10 thoughts are on this. We can either have the people in those  
11 last couple of rows stand on the sides, or we can direct them  
12 to the overflow room. Again, this will be a temporary  
13 situation because once we make some real headway with jury  
14 selection, things will open up here.

15 MR. SHECHTMAN: Judge, I think what we'd ask is to  
16 leave it up to the family members. If they're comfortable  
17 standing, we're fine. There's at least one, Mr. Huberfeld's  
18 mother is here, who is old, she may prefer to be in the other  
19 room, but if you'll give the others the choice, that would be  
20 great.

21 MR. MAZUREK: Your Honor, I would ask that the family  
22 members have the option to remain in the courtroom. Obviously,  
23 this is one of the most important days of Mr. Huberfeld's life,  
24 and the people who are close to him want to be in the process.

25 THE COURT: Let me make this clear, in case it's not

1 clear. The overflow room has a video feed. It's not a  
2 situation in which they wouldn't be able to see.

3 MR. SHECHTMAN: I understand completely, but I think  
4 if we give them the choice, some of them will head to the  
5 overflow room.

6 THE COURT: All right. Government?

7 MR. CAPONE: No objection to that, your Honor.

8 THE COURT: I guess we'll make that same option  
9 available for the members of the press as well.

10 MR. SHECHTMAN: That's fine.

11 THE COURT: Okay. So that's what we'll do. So folks  
12 are allowed to stand. You may be more comfortable going to the  
13 overflow room. Obviously, you don't need to stand up now,  
14 until we bring in all the jurors, but when the jurors come in,  
15 you may want to go to the overflow room. Okay.

16 All right. So, counsel, just give me the numbers  
17 again, jurors 10?

18 MR. SHECHTMAN: 10, 18, 27, 30, 57, 78, 91, 98, 118,  
19 123.

20 THE COURT: Okay.

21 MR. SHECHTMAN: And you can excuse 37, 56 and 121.

22 THE COURT: Okay. So I will send my deputy and go and  
23 bring those jurors in. Again, what we're going to do now, if  
24 it's okay, is -- everyone can be seated now. Because what  
25 we're going to do right now is just bring in these ten jurors,

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1 one at a time; so you can go ahead and sit down, but when the  
2 entire panel comes in, you'll need to stand off to the side or  
3 go to the overflow room.

4 (Pause)

5 THE COURT: So those ten jurors are here. We're still  
6 waiting on one other juror. It may be that we just go on  
7 without that person, but the other ten are here in the hallway,  
8 I believe. Is that where they are, Tara?

9 THE DEPUTY CLERK: Yes.

10 THE COURT: What seems to me to make sense is we bring  
11 all ten of them in first and ask them those general questions  
12 in terms of the updated list of names and newspaper articles  
13 and the like, any other information that they've seen or read  
14 about this case, and then send nine of them out and go one at a  
15 time like that. Make sense? We'll also swear them when they  
16 come in. Anyone have any objection to that?

17 MR. CAPONE: That's fine.

18 MR. SHECHTMAN: No problem.

19 THE COURT: All right. Let's bring those ten in.

20 (A jury of 12 and 4 alternates was impaneled)

21 (In open court; jury not present)

22 THE COURT: Let's just make sure all the jurors are  
23 gone. Okay? All right. So there's some legal matters we need  
24 to discuss. I don't know about counsel. I could use two  
25 minutes and 42 seconds just to kind of get myself together. If

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1 counsel want a seven-minute break to use the facilities and get  
2 their thoughts together, we can do that. If not, I'll take two  
3 minutes and 42 seconds. How do counsel --

4 MR. SHECHTMAN: I think we'll take the seven, if  
5 you'll give it to us.

6 THE COURT: All right. Sounds good. See you in seven  
7 minutes.

8 (Recess)

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1 (In open court; jury not present)

2 THE COURT: Okay. Is everyone here? Are counsel for  
3 the non-parties here?

4 MR. BELL: They are, your Honor.

5 THE COURT: Come on up.

6 Let me start off with a question to Huberfeld's  
7 counsel regarding Request No. 8.

8 MR. MAZUREK: On which?

9 THE COURT: On the Rechnitz subpoena.

10 MR. MAZUREK: Regarding the --

11 THE COURT: Yes. You say that this is relevant to  
12 bias or motive. Can you tell me more about why you feel this  
13 is relevant to bias and motive as opposed to general  
14 impeachment.

15 MR. MAZUREK: Your Honor, the health insurance fraud  
16 is one crime that Mr. Rechnitz was given coverage and his  
17 recollection for the government. It is something that we do  
18 not have any Rule 16 discovery about, so typically I do believe  
19 that if the government has given a witness coverage for  
20 something for a crime he knows he will not have to plead guilty  
21 to, he is not going to face punishment for, typically we know  
22 more what that crime actually was other than a line or two in  
23 the cooperation agreement. In this instance, unfortunately, we  
24 don't have that information in the Rule 16 discovery.

25 In order to evaluate the bias or motive of this



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1 witness in terms of reasonably perspective of this crime that  
2 the government is giving him a pass on, we are trying to obtain  
3 the information so that we can properly put that information  
4 before the jury so that they can evaluate whether, in the list  
5 of crimes that he is given coverage for, this is what his  
6 conduct actually was.

7 THE COURT: What my question is, I understand you want  
8 the information, you feel you don't have the information. My  
9 question is why is it that you feel that this information,  
10 whatever it is, goes to bias or motive, especially if this  
11 witness has coverage for it?

12 You made a big stink before about the government  
13 essentially suggesting to a jury that a witness has a motive to  
14 tell the truth because of their agreement with the government.

15 If the witness is covered for this crime, how does  
16 other information about that crime for which the witness is  
17 covered give that witness a motive to lie or a bias for the  
18 government or against Mr. Huberfeld?

19 MR. MAZUREK: It shows he has already received a  
20 benefit, your Honor; and, therefore, the jury, if they  
21 understand how big a benefit he has received for telling things  
22 that the government are happy with him telling, then that could  
23 go to his bias, that he has a particular interest in satisfying  
24 the government at the time that he entered into the cooperation  
25 agreement because they're giving him a pass on a federal crime.

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1 MR. SHECHTMAN: Could I add to that, I mentioned in  
2 that short letter we wrote to the court, I take it his motive  
3 differs if this is a hundred dollar health insurance fraud or  
4 10,000 or hundred thousand dollars health insurance fraud,  
5 whether it is a more or less important for him to curry favor.  
6 We have no idea. He says I committed insurance fraud.

7 If we say to him how big was it, and he says a hundred  
8 dollars, we are stuck with the answer without these records.

9 So the question here is what is the scope of the  
10 wrongdoing? And what is the scope of the wrongdoing he had  
11 coverage for? And how many lies are there? And are there lies  
12 on each one? Are there separate years because if they're  
13 separate years, then we have three separate crimes he got  
14 coverage for. All we want to know is what were the lies and  
15 how much were people defrauded and were they in one year or  
16 three because presumably if I get coverage for a big crime, I  
17 am more likely to tell a big lie.

18 THE COURT: That is what I had thought might be the  
19 theory, but I wanted to get confirmation because again there is  
20 no requirement that there be sort of a consistent theory of  
21 prevarication, but it does seem it is slightly inconsistent  
22 with at least what counsel for Huberfeld was pushing in the  
23 last couple of weeks.

24 If what we are saying here is this goes to his bias in  
25 favor of the government as opposed to a bias against Mr.

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1 Huberfeld and Mr. Seabrook, he has this very valuable coverage  
2 and you want to probe how valuable this coverage is, that  
3 certainly seems that is a bias that this person could have in  
4 order to please the government.

5 It does seem we are going to get right back into this  
6 situation in which perhaps, I don't know, I am not psychic, but  
7 the government might say because this witness has coverage for  
8 this, the only thing that harms him regarding this is if he  
9 were to lie about it; and, therefore, he has a motive to tell  
10 the truth.

11 I wanted to make sure that is where we were and we are  
12 on that same page because I want to be prepared in case I start  
13 getting that objection again to this. That does seem sort of  
14 incongruous with your earlier theory of prevarication and your  
15 theory as to the nature of this cooperation agreement. Let me  
16 hear from the non-parties on this in terms of any response to  
17 this proffered reason for Request No. 8.

18 MS. BIRGER: With respect to that question, your  
19 Honor, I actually didn't hear an articulated motive for bias in  
20 that answer. I think the court's question kind of puts it  
21 neatly, which is that if Mr. Rechnitz was covered for this, he  
22 has no motive to lie. The second issue as to what Mr.  
23 Schechtman said about needing to know essentially the dollar  
24 value of the fraud. That is pure impeachment information. All  
25 they're looking for is more evidence of extrinsic evidence of a

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1 collateral act, and the dollar value says nothing about the  
2 nature of the crime.

3 The second issue is this is exactly the kind of thing  
4 people routinely inquire into on cross-examination. They will  
5 hear what the answer is, and if the answer gives rise to the  
6 need for documents which I would be shocked to hear, we can  
7 deal with that.

8 The third thing is, I am in a slight disadvantage. I  
9 have not seen the 3500 material, but I think the defense is  
10 probably being somewhat disingenuous because I would be shocked  
11 if the dollar amount and the description of what the nature of  
12 the fraud was was not in the 3500 material. I suspect that it  
13 is. I am the wrong party to ask.

14 THE COURT: I don't think the defense is necessarily  
15 cabining their request to the dollar amount of the fraud. I  
16 think what they're saying, if we take this as an analogy,  
17 instead of coverage for criminal activity, let's say the  
18 government were paying a witness -- obviously, this is a  
19 strange analogy, but instead of giving coverage for a crime,  
20 the government were paying a witness, and if the government  
21 paid a witness \$100.00 to testify, perhaps that witness has  
22 some motive to curry favor with the government or to show  
23 gratitude for this wonderful gift that they have been given as  
24 opposed to if this witness is paid \$300 million. In that  
25 situation, the government, to make this analogy, is a more

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1 generous sort of benefactor, and that might cause the witness  
2 to have a greater desire to please the government and a greater  
3 sense of loyalty to the government.

4 I think that is what the defense is saying.

5 MS. BIRGER: I think you're right. I didn't think to  
6 build it that way. What they're looking for this is the  
7 conduct and conduct. The details would include more  
8 information about the conduct and dollar amount. That is what  
9 they have articulated and that is what they're asking for. I  
10 think that is probably in the 3500 material.

11 Even if it is not --

12 THE COURT: Hold on.

13 MR. SHECHTMAN: It is --

14 THE COURT: Counsel, hold on.

15 (Multiple voices)

16 THE COURT: You may want to just, if you haven't been  
17 able to figure that out yet, you are winning on this and you  
18 may want to stop. Let me hear from counsel more on that.

19 MS. BIRGER: I don't know what is in the 3500  
20 material. I know it was disclosed at the meetings. I can't  
21 speak to what is actually written down in 3500 material. The  
22 government can certainly answer that question.

23 What I can say is that this is exactly the kind of  
24 thing where the government routinely will have a witness get  
25 immunized for some robbery that is not part of the charges. If

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1 you're talking about a non-white collar case or fraud not part  
2 of the charges, and it is not part of the Rule 16 discovery  
3 because it is not part of the case and the witness gets on the  
4 stand and the witness talks about the conduct, the defense uses  
5 cross-examination to find out more if they want to based on the  
6 3500 material.

7           There is no case that they have cited that involves  
8 using a trial subpoena to get evidence that has nothing to do  
9 with the charged crimes and only has to do with a prior bad act  
10 that has already been admitted by the defendant. There is not  
11 a single case.

12           THE COURT: Okay. Let's talk about the other request,  
13 and let me hear from counsel for the defendants about the other  
14 request. Again, Request 8 did seem to be an outlier. It did  
15 seem to be different from the other requests. The other  
16 requests did seem to me to be more quintessential about  
17 standard impeachment. Let me hear from counsel from the  
18 defense on that with the other request.

19           MR. SHECHTMAN: Judge, the income tax returns I think  
20 fall into the same category. As your Honor may know, there is  
21 a sort of historical oddity in this district, and that is that  
22 they can't give coverage for tax crimes because that can only  
23 happen through Washington. So the plea agreements standardly  
24 carve-out taxes.

25           I have done this for 30 years on both sides, and your

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1 Honor has experience. I have never known a cooperator who  
2 testified with a cooperation agreement who the tax division  
3 then brought charges against. I have had cooperators who said  
4 to me but I am not covered for tax crimes. If it is a CJA  
5 case, I am just covered for the bank robbery, but not covered  
6 for tax crimes, are they going to come after me. I have said  
7 for 30 years I have done this, no one has, no one will.

8 So I think what is absolutely true in this case is for  
9 lack of a better word, implicit coverage here, the coverage  
10 that every lawyer knows this person got is for tax crimes. The  
11 question is how big are those?

12 Now, I know that a lot of what is going on here has  
13 not been reported. This is a person who was with Nissen said  
14 he got as much as \$8 million, \$6 million, it changes, \$4  
15 million. The chance of that being on a tax return strikes me  
16 as zero. At times what he has said is I had to pay people off  
17 who lost money; and, therefore, it is a wash. Well, that is  
18 not an ordinary business experience. It probably isn't in the  
19 same year anyway.

20 I think there is a massive tax fraud here. This is a  
21 person who got Nissen to write him a loan document totally  
22 fabricated in order to cover the fact that he was getting  
23 income from Nissen. It is a fella who got Nissen to pay his  
24 American Express bills to the tune of I think a million dollars  
25 so he wouldn't have tax liability. There is a major tax crime

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1 here. We can inquire into it, but we are in the exact same  
2 position of not knowing the full scope of it without seeing  
3 those returns.

4 If people say look, there is some personal things on  
5 there to be redacted, that is fine. My real question is what  
6 did he report as income? Because I am prepared to bet the  
7 answer is very little of what we know he got and he really does  
8 have coverage for that in the practical sense that in the  
9 history of the Southern District of New York, no cooperator  
10 with a cooperation agreement has ever been prosecuted for a tax  
11 crime.

12 Maybe somebody will tell me that Mr. Rechnitz will be  
13 the first, but I would bet heavily against it.

14 THE COURT: Just to break this down for me, give me a  
15 sense of what it is you generally -- what your inquiry of this  
16 witness would be and why these records are necessary and why  
17 these records aren't again just quintessentially for  
18 impeachment.

19 MR. SHECHTMAN: The question will be exactly the same,  
20 which is one of your motives in cooperating here, right, was  
21 because you were committing major tax crimes throughout this  
22 period and you knew that if you cooperated, even though it  
23 wouldn't formally be in this agreement, you knew that you were  
24 going to get coverage for it, that the Department of Justice  
25 was not coming after you.



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1           And how much, Mr. Rechnitz, was that tax fraud? To  
2           which the answer is X, and we are stuck with that. So I think  
3           this is on all fours, which is how big is this crime that in  
4           effect, for practical effect, in the history of this district  
5           you have coverage for.

6           THE COURT: What if the witness says something  
7           different in response to those questions? You're banking on  
8           the witness saying that, yes, this is not in the cooperation  
9           agreement, but I believe, because I was told by counsel, my  
10          belief is that I will informally be covered for this.

11          If the witness doesn't say that, what is the relevance  
12          of any of this if the witness said I am not covered and I don't  
13          believe I am covered for this.

14          MR. SHECHTMAN: Your Honor, if he says the following.  
15          No one has given me any impression I am likely to be covered  
16          for this and, God, I am scared to death that the Department of  
17          Justice is going to come after me, then my view is we don't get  
18          the tax returns.

19          If he says what I think he is going to say and what  
20          they know is the reality, then I think we should get the  
21          returns. What I am saying is at the very least, and I think  
22          Ms. Birger said this, we should have the returns here, they  
23          should be available, and if the question goes the way I think  
24          it, we should be able to get them. They will be going to be  
25          complicated because there are lots of corporations.

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1           The issue is simple because there is lots of income.  
2           I am willing to do it that way and see what he answers. If he  
3           answers the way I think, if he says uncharacteristically  
4           truthfully, then I think we are entitled to them.

5           THE COURT: Back up for me.

6           Is it your belief -- and again I don't want to try to  
7           make you put out your entire cross-examination here and divulge  
8           that to the government. Let me get a sense of if the witness  
9           testifies that he is not covered for any tax fraud -- backing  
10          up even further that.

11          If the witness is asked whether or not these  
12          ill-gotten gains were reported on his tax returns, I think that  
13          you are probably suspecting that the witness is going to say  
14          no, that he did not report them, correct?

15          MR. SCHECHTMAN: I don't know what he will say. In  
16          this sense it is like the health insurance. If he says how big  
17          was the health insurance fraud? Ah, a hundred dollars, it was  
18          one year what I think your Honor hasn't ruled yet, but I think  
19          what your Honor is saying is because that is so closely tied to  
20          what the deal is and how rich this deal is, we should be able  
21          to explore it and I will be stuck with his -- and not be stuck  
22          with his answer because bias is never collateral. This is the  
23          same.

24          If he says I have been led to believe or I believe  
25          that I won't be prosecuted for tax fraud, right, then I think

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1 at that point the tax returns are ours for the same reason that  
2 I hope the health insurance documents are for us. I am saying,  
3 your Honor, he may say I think I have exposure, I can't go to  
4 sleep at night because of it. If he says that, we lose.

5 THE COURT: Okay. Anything from Huberfeld's counsel  
6 on this?

7 MR. MAZUREK: I will just add one wrinkle to this  
8 issue in this particular case, and that is because in the  
9 discovery in the case the government produced a slew of emails  
10 from this witness' business accounts, these emails contain  
11 partial information.

12 For example, as attachments to some of the these  
13 emails are draft tax returns, there are parts and pieces of tax  
14 returns and there is correspondence, for example, between the  
15 witness and his accountant where the witness is attempting to  
16 convince his accountant to change things on his tax return.

17 So the addition I would just like to raise here is  
18 that in the case where this witness, we get to question him on  
19 whether he, in fact, reported ill-gotten gains or directed his  
20 accountant not to report certain income or to change the  
21 characterization of monies he was receiving from two different  
22 financial frauds he was involved in, and we know that that was  
23 going on and how the end product results it, as a result of how  
24 the tax return was eventually filed is left open, I think there  
25 is a real fairness issue here that the government can't on one

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1 hand give us this information and we don't know how fully it  
2 turned out so I could be asking these questions, and then the  
3 witness gives an answer and at that point in time perhaps the  
4 final return will become relevant in any case as a prior  
5 inconsistent statement that could be admitted under 615.

6 MR. SCHECHTMAN: I would add the returns we have don't  
7 go past 2013, and the Nissen fraud and -- (inaudible) -- fraud  
8 2013, 2015.

9 THE COURT: Let me hear from the non-party.

10 MS. BIRGER: Your Honor, this is nothing but a string  
11 of assumptions. The first thing is that Mr. Schechtman started  
12 off by saying this is in the same category as the health  
13 insurance benefits, and it is the exact opposite category  
14 because, as the court noted, he has not been immunized for this  
15 conduct.

16 So the first big assumption is Mr. Schechtman is  
17 assuming there is tax fraud. There is zero evidence of a tax  
18 fraud. This was conceded in the letter to the court by  
19 Mr. Huberfeld's counsel. He said we believe there is a tax  
20 fraud. We are starting from this premise that they are hopeful  
21 there is a tax crime here that they will be able to prove if  
22 they can see the tax returns.

23 Second, they are assuming that Mr. Rechnitz was  
24 implicitly covered and immunized for something that he was  
25 explicitly told he is not covered for. This is something the

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1 exception that swallows the rule, your Honor. Every single  
2 case in this district would now be well, yes, they say he is  
3 not covered for tax frauds, but we all know he really is  
4 covered for tax frauds. That is not the case, practicing in  
5 this district and not the case you can take an agreement and  
6 say I assume the exact opposite.

7 The third thing is they're assuming if they can get  
8 the tax returns, these will somehow become evidentiary and  
9 useful and something admissible. It is very hard to spin that  
10 out into how exactly that will come to be, that the tax returns  
11 would be admissible evidence in this trial which has nothing  
12 whatsoever to do with Mr. Rechnitz's taxes, and so we are going  
13 from assumption to assumption to assumption to assumption and  
14 saying let's have the tax returns just in case. That is not  
15 what Rule 17 is for, your Honor.

16 We are in uncharted waters.

17 MR. SCHECHTMAN: I will say this about the waters.

18 We have a cooperating witness who we know for the  
19 Nissen fraud asked for a loan document be created to cover the  
20 fact that he was getting at least a million dollars in income.  
21 That is in the discovery material of that document. It is  
22 Rechnitz 101, and we know that he asked Nissen to pay his  
23 American Express bill so he wouldn't have to have income show  
24 up on his taxes, and I can tell you, I don't want to disclose  
25 cross-examination, but there are three other examples of things

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1 he did to avoid tax fraud.

2 To begin and say he doesn't have a tax fraud on him, I  
3 know Ms. Birger attended a lot of these sessions. She called  
4 me disingenuous, but I don't think anybody could look at what  
5 Mr. Rechnitz said to the government and think at least he  
6 didn't set out to make sure that he was reporting far less  
7 income than he had.

8 The second thing is in terms of the practice in this  
9 district, I think the court knows, I think the government here  
10 knows, there has never been a cooperating witness prosecuted  
11 for tax cases. It is carved out because the Department of  
12 Justice requires it. The tax division is separate from the  
13 Southern District. It just doesn't happen. I have had insider  
14 trading cases and cooperating witnesses say to me look, I got a  
15 lot of money. Do I have to worry about taxes?

16 The answer is amend your returns, do what is  
17 appropriate. I am not going to tell you not to deal with it,  
18 but the Department of Justice has never prosecuted any client  
19 of mine or any client of any lawyer I know for tax charges.

20 So I don't think, I don't know what the word was that  
21 we were hoping the door here. This is a very narrow, specific  
22 door and the only question here is are we going to allow form  
23 to triumph over substance because the substance here is this  
24 fellow will not be prosecuted for taxes. If the government  
25 wants to get up and say he will be prosecuted for tax charges,

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1 this is the exception for that, we referred it to the  
2 Department of Justice, they told us they're going to bring tax  
3 charges, maybe we shouldn't be here, but that is not going to  
4 happen. That is the reality, and it is important.

5 There is a wonderful quote from Judge Friendly that  
6 says judges aren't required to ignore things every man and  
7 woman knows. Every man and woman knows he will not be  
8 prosecuted for taxes. I do this is on all fours.

9 THE COURT: Again, I will say this. I am not sure  
10 that every man and every woman knows that. It may be that it  
11 is the practice in this district. It may be that people who  
12 practice frequently in federal court know that or believe that.  
13 It does seem to me what is critical here is what the witness  
14 believes, not what actually may be true. Even if it is the  
15 case that folks typically don't get charged with tax fraud who  
16 are cooperators, what matters is what the witness believes.

17 If the witness believes he will be prosecuted, that is  
18 what matters. Conversely, if it is the case that everyone who  
19 cooperates with the government were to get prosecuted for tax  
20 fraud, if the witness believed that that wasn't the case, that  
21 is really what is critical here, is going toward what this  
22 witness believes. Let me find out from the government since  
23 you're here, too, in terms of timing. When is Rechnitz  
24 scheduled to testify in terms of the weeks of this trial?

25 (Off-the-record discussion)

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1 THE COURT: Give me a sense whether you plan it to be  
2 this week.

3 MR. CAPONE: We do plan it to be at least start this  
4 week potentially on Wednesday. It could be Thursday, but  
5 potentially Wednesday.

6 THE COURT: Let me find out this. I want to rule on  
7 this. I want to rule on this properly, not just expeditiously.  
8 My sense the ruling on this won't affect either side's opening  
9 statements or am I wrong there? Let me hear from --

10 MR. SCHECHTMAN: I won't, and certainly if your Honor  
11 is reserving on this, it definitely won't.

12 MR. CAPONE: Not the government's, your Honor.

13 MR. MAZUREK: No, your Honor.

14 THE COURT: Along those lines, there is another open  
15 issue regarding -- putting aside the subpoenas for the time  
16 being -- there is another issue regarding emails that the  
17 parties were not able to agree on and whether or not these  
18 emails should be allowed in evidence. The defense had  
19 previously filed a motion to exclude these. The government  
20 filed a letter on October 21st. As of last night at least I  
21 didn't see anything from the defense filed.

22 Did the defense file any letter on that? And do you  
23 wish to file a letter?

24 MR. MAZUREK: I was going to file it at the end of the  
25 court day today, if that is okay?



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1 THE COURT: Yes.

2 MR. CAPONE: Your Honor, although we will adjust if we  
3 have to, that could affect a very, very small portion of the  
4 opening. If we can hash it out tomorrow morning after your  
5 Honor receives the letter, that would be helpful.

6 THE COURT: How soon today can -- let's do this. Can  
7 you get me that letter by 7:30 tonight, counsel?

8 MR. MAZUREK: Yes.

9 THE COURT: I will say, I am open to having my mind  
10 changed. My inclination is to allow this evidence in, as I do  
11 think it is relevant to the state of mind, but I will let  
12 counsel submit something on that.

13 Is there anything else we need to deal with today?  
14 We'll go back to the subpoena issue in a second and I will  
15 think about that more. Is there anything else we need to deal  
16 with today, counsel for the government?

17 MR. CAPONE: No.

18 MR. SCHECHTMAN: Nothing, your Honor.

19 MR. MAZUREK: No, your Honor.

20 THE COURT: Let me hear if there is anything else from  
21 the non-parties regarding -- again if it is not clear, my  
22 inclination at this point -- again I am open to perhaps  
23 changing my mind -- is to quash the subpoena regarding the  
24 defense request with the exception of Request No. 8 as it  
25 relates to Rechnitz. That is my inclination. Do counsel for

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1 the non-parties have anything else you want to say about the  
2 subpoenas at this point?

3 MS. BIRGER: The only thing I would say is perhaps a  
4 request for clarity, and if we don't need the court, I can work  
5 this out with the defense lawyers.

6 The request for Request No. 8, they want records of  
7 payments for health insurance benefits. Then it says including  
8 but not limited to -- I take that back. I take that back. It  
9 is relatively clear. So I withdraw that.

10 So just clarity would be the request is for the  
11 documents related to the payments or benefits which is how I  
12 have understood it and not, for example, I initially read the  
13 subpoena it asked for every co-payment from an individual  
14 family member's visit to a doctor which would show what the  
15 medical procedure was, what the billing was and what the  
16 payment was. I don't think that is what the defense is  
17 requesting, but if it is, that is both far more voluminous and  
18 far more intrusive.

19 THE COURT: Defense counsel? Government?

20 MR. CAPONE: Just with respect to this request, I  
21 wanted to add that I believe there is at least something in the  
22 3500 on it, and to the extent it helps resolve the issue, we  
23 can provide whatever other information we know about and what  
24 we can do, put what this witness would testify about in a  
25 letter to the defense.

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1 MS. BIRGER: And to add to that, I actually -- again  
2 if not in the 3500 material, but I don't think Ms. Rechnitz has  
3 documents about this. It may be production would be the  
4 occasional check. The more complete description is likely to  
5 be in the 3500 material. I will produce whatever the court  
6 orders me to produce. It is full in disclosure I will give the  
7 defense what they're looking for.

8 MR. SCHECHTMAN: The more complete discussion is that  
9 300 material. The 3500 material said I lied about my health  
10 insurance.

11 THE COURT: My sense is what the government is saying  
12 is that the government might be in possession of some more  
13 documents. Is that right? Am I correct?

14 MR. CAPONE: Certain documents, your Honor, but I  
15 believe we have more information that we can convey to the  
16 defense in a letter in terms of what we think the defendant  
17 would testify to. I think the notes had more than that. If  
18 they don't, we can flush it out for them.

19 THE COURT: My sense is that -- again I don't want to  
20 put words in counsel's mouth -- my sense is the defense won't  
21 object to the government giving them information, but I also  
22 don't think that this -- I am not optimistic this will resolve  
23 everything. Defense counsel, anything you want to add to that?

24 MR. SCHECHTMAN: No. If there are documents, I hope  
25 we can get them. May I add one thing?

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1 THE COURT: Sure.

2 MR. SCHECHTMAN: I thought you were leaning on the  
3 taxes to see where he was on cross-examination, and if I am at  
4 all right about that, could you ask the non-party to just  
5 gather those documents so if the door is opened to them, for  
6 the same reason, we don't have to wait a date to get them.

7 THE COURT: Let me get a sense from the defense as to  
8 really what you're looking for from these documents. Are you  
9 really looking for just statements on the returns related to  
10 reported income? Is that really what we are talking about  
11 here?

12 (Off-the-record discussion)

13 MR. SHECHTMAN: He has S Corporations I think that  
14 flow through. I don't know if we need all the S Corporations,  
15 and we probably need forensic analysis to do it.

16 For example, there is one year we do have in which his  
17 charitable contributions exceed his income. That can happen, I  
18 guess, but it is surprising. I think if we can get the basic  
19 1099 for those three years, '14, '15 -- 1040s, rather, for  
20 those three years and whatever W-2s or 1099s he has, that would  
21 be useful, too.

22 It would be the basic return, which isn't that big a  
23 document. None of the S Corp. The basic return and the W-2s  
24 that he is showing and 1099s.

25 THE COURT: For which years to be clear again?

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1 MR. SCHECHTMAN: Partial on '13. It would be '13,  
2 '14, '15, '16.

3 THE COURT: Okay. Let me hear from the non-party. It  
4 seems it may make sense from an efficiency standpoint to have  
5 those documents ready just in case they end up needing to be  
6 turned over.

7 MS. BIRGER: I don't mind doing that. I will do what  
8 I have to do to make sure they're ready. I vigorously oppose  
9 having to turn them over. Whittling it down to page 1040, 1040  
10 is a pretty lengthy document for somebody who runs a business.  
11 There is a lot in there that is completely extraneous. We  
12 started with all I need to see is the reported income and now  
13 we have gone to basically I want to see the whole return.

14 THE COURT: I think counsel may be talking past you.

15 MS. BIRGER: Are we talking about a two-page part of  
16 1040 or full return?

17 THE COURT: I don't think defense counsel is looking  
18 for the entire return. I think the defense counsel is looking  
19 for those lines on the return in which income would be  
20 reported, which would be quite a few lines, but not an enormous  
21 amount of lines. Let's hear from defense counsel.

22 MR. SCHECHTMAN: That is fine, Judge, if I could get  
23 the first four pages of each return, we could have a pretty  
24 good idea what his tax situation is. I don't need all the  
25 detail, but I would like to know what he is reporting and what

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1 is he showing the source of the income for.

2 So that is it. I don't think this is a voluminous  
3 request, and if there is anything that is remotely private,  
4 just tell us, tell the court. We don't want --

5 MS. BIRGER: I will gather them, your Honor. I will  
6 do what needs to be done and see what transpires.

7 THE COURT: Okay. All right. I will reserve on this.  
8 Is there anything else we need to deal with today,  
9 counsel for the government and the defense?

10 MR. CAPONE: No, your Honor.

11 THE COURT: Again I don't want to make counsel for the  
12 non-party come back again unnecessarily. Is there anything  
13 else you wish to say while you're here today regarding the  
14 motion to quash?

15 MS. BIRGER: No, your Honor.

16 THE COURT: Let's do this. Have counsel try to get  
17 here tomorrow, say, 10 minutes to 9:00 to avoid unnecessary  
18 bumping into jurors and counsel, and if you can speak to the  
19 tech people this afternoon.

20 Anything else from the government and the defense?

21 MR. CAPONE: No, Judge.

22 THE COURT: All right. See you tomorrow.

23 (Court adjourned until Tuesday, October 24, 2017, at  
24 8:50 a.m.)  
25